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MEMO ENDORSED

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July 20, 2022

Hon. Kenneth M. Karas
The Hon. Charles L. Brieant Jr.
Federal Building and United States Courthouse
300 Quarropas St.
White Plains, NY 10601-4150

Re: *PharmacyChecker.com LLC v. National Association of Boards of Pharmacy et al.*, No. 19-cv-07577-KMK; Request to Conditionally Seal Plaintiff's Oppositions to Motion for Summary Judgment and Daubert Filings

Dear Judge Karas:

We represent plaintiff PharmacyChecker.com LLC. This letter is submitted on behalf of plaintiff pursuant to Section IX(a) of the Court's Individual Rules of Practice and the Stipulated Protective Order to request that certain confidential information included in (1) Plaintiff's Memorandum of Law in Opposition to Defendants' Joint Motion for Summary Judgment on Sherman Act § 1 Claim, (2) Plaintiff's Statement of Material Facts in opposition to Defendants Joint Motion for Summary Judgment on Sherman Act § 1 Claim, (3) and accompanying exhibits, filed contemporaneously herewith, be conditionally placed under seal. Specifically, plaintiff seeks the following to conditionally be placed under seal:

1. Plaintiff's Memorandum of Law in Opposition to Defendants' Joint Motion for Summary Judgment on Sherman Act § 1 Claim;
2. Exhibits 1-2, 6-7, 9-11, 14, 17-18, 20-23, 26, 28-30, 33-34, 41-43 to Plaintiff's Opposition to Defendants Joint Motion for Summary Judgment on Sherman Act § 1 Claim;
3. Plaintiff's Local Rule 56.1 Statement of Material Facts in opposition to Defendants Joint Motion for Summary Judgment on Sherman Act § 1 Claim;
4. Declaration of Gabriel Levitt in support of Plaintiff's Opposition to Defendants' Joint Motion for Summary Judgment on Sherman Act § 1 Claim.

Pursuant to paragraph 24 of the Stipulated Protective Order, plaintiff has filed the foregoing conditionally under seal because they contain "Protected Material" as defined by the Stipulated Protective Order. Dkt. 181. The material includes documents, or information derived from documents, designation as Confidential or Outside Counsel Eyes Only by plaintiff PharmacyChecker.com.

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PharmacyChecker.com, as the designating party, has the “obligation to file a motion to permanently seal the documents pursuant to applicable rules.” *Id.* at 16.

While there is presumptive right of public access to judicial documents, that right is “not absolute.” *Mirlis v. Greer*, 952 F.3d 51, 59 (2nd Cir. 2020) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 599 (1978)). In evaluating whether to grant a sealing request, the court must evaluate several factors: (1) whether the document qualifies as a judicial document; (2) the weight of the presumption of public access; and (3) whether any countervailing factors or higher values outweigh the right of public access to the judicial document. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2nd Cir. 2006).

Conditional sealing of the above-referenced materials is appropriate in this instance. *See, e.g., GoSMiLE, Inc. v. Dr. Jonathan Levine, D.M.D. P.C.*, 769 F. Supp 2d 649–50 (S.D.N.Y. 2011) (allowing sealing of documents “contain[ing] highly proprietary [business material]”).

Respectfully submitted,



Aaron Gott
Counsel for PharmacyChecker.com LLC

Plaintiff's motion to conditionally seal the referenced materials is granted. As the Court has previously ordered, (*see* Dkt. No. 266), Plaintiff's motion to permanently seal these materials and any other materials filed in conjunction with the parties' summary judgment briefing will be due once Defendants' summary judgment motion is fully briefed.

SO ORDERED



KENNETH M. KARAS U.S.D.J.

7/22/22